

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 97-727

November 14, 1997

MAINE PUBLIC SERVICE COMPANY  
Application for Approval of an Electric  
Rate Stabilization Agreement with  
Wheelabrator-Sherman

ORDER DENYING  
CERTIFICATE OF  
APPROVAL

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**I. SUMMARY**

In this Order, we deny, without prejudice, Maine Public Service Company's (MPS) petition for a certificate of approval for an electric rate stabilization agreement (Agreement) that restructures its existing purchase power agreement (PPA) with Wheelabrator-Sherman (W/S). We deny approval because we are unable to find, at this time, that potential future costs are not likely to be disproportionate to near-term savings. We encourage MPS to re-file its petition for approval to allow more time for us to make an informed decision as to the long-term economics of the Agreement.

**II. BACKGROUND**

On September 19, 1997, MPS filed, pursuant to 35-A M.R.S.A. § 3156, for approval of an electric rate stabilization agreement that amends its current W/S PPA. Under the existing PPA, MPS must purchase up to 126,582 MWh per year from W/S's 17.6 MW biomass plant in Sherman Station. The existing PPA specifies purchase rates for an initial 15-year term (through the year 2000), and allows either party to extend the PPA for an additional 15 years at negotiated or Commission-set rates.

The proposed Agreement includes three elements. First, MPS would pay W/S \$8.6 million at closing; this amount would be financed by the Finance Authority of Maine (FAME) pursuant to 10 M.R.S.A. § 963(7-A). MPS would also pay W/S an additional \$2,350/day (up to a maximum of \$105,750), for each day closing is delayed past November 1, 1997. Second, W/S would provide monthly credits to MPS for the remainder of the PPA initial term. These credits total \$10 million (nominal) and have a present value of approximately \$8-\$9 million. The rates in the initial term of the PPA (1986-2000) do not change. Third, the Agreement would reduce the PPA extension period from 15 to 6 years, increase the purchase obligation in each of the extension term years by 10,000 MWh to 136,582 MWh, and establish purchase prices for power beginning at \$0.854/kWh in 2001 and escalating at 2% per year.

In addition to its request for approval of the Agreement, MPS has proposed to modify its current rate plan so that savings in the near term from the Agreement can be used to offset rate increases during the remaining term of the rate plan. Under MPS's current rate plan, savings from a restructuring of the W/S PPA would reduce specified deferrals that would be recovered in rates beginning in 2000. MPS has also filed motions requesting assurance that the costs of the Agreement will be recovered in rates.

### III. DISCUSSION

Under section 3156, the Commission must make five explicit findings in order to issue a certificate of approval for a rate stabilization agreement. These required findings are: (1) the agreement and any assistance in FAME financing will provide near-term benefits to ratepayers that will be reflected in rates; (2) the potential for future adverse rate impacts are not likely to be disproportionate to near-term gains; (3) the agreement does not have as a necessary or probable consequence the permanent cessation of operations of a qualifying facility (QF) with a capacity of more than 50 MW; (4) the agreement is consistent with the Maine Energy Policy Act, 35-A M.R.S.A. § 3191; and (5) the agreement will not adversely impact the availability of a diverse and reliable mix of energy resources and will not significantly reduce the availability of long-term resources to meet future electric demand.

The Agreement would produce near-term savings that are in the range of \$3.5 million net present value (NPV) through 2000. If the Agreement is ultimately approved, we would accept MPS's proposal to modify its existing rate plan so that the Agreement's savings would be passed through to ratepayers during the remaining term of the Company's rate plan. Accordingly, we are able to make the first statutory finding that the Agreement will provide near-term benefits that will be reflected in rates.

We are unable, however, to make the second statutory finding that the potential for future adverse rate impacts is not likely to be disproportionate to near-term gains. The overall benefit or cost of the Agreement to MPS and its ratepayers depends on assumptions of what MPS would pay W/S during the renewal term if the PPA was not restructured. The PPA provision governing the renewal term provides:

the rates shall be based on avoided capacity costs of the same plant on which avoided capacity rates were based at the outset of this contract and on avoided energy costs. The parties agree to negotiate in good faith

to set the avoided energy and capacity costs upon which rates shall be based. In the event the Buyer and Seller are unable to agree to the rate, the Buyer and Seller agree to submit dispute to the Maine Public Utilities Commission.

Seabrook I is the plant upon which avoided capacity cost was based in the original PPA. Subsequent to entering the PPA, MPS sold its entitlement in Seabrook I. The lack of specificity in the language of the PPA renewal provision and MPS's previous sale of its Seabrook I entitlement raises questions concerning the rates the Commission would establish if the matter were brought to it for resolution.

The record in this proceeding contains several theoretical approaches and numerical calculations of the renewal term rates that the Commission might establish if the matter were litigated. The NPV savings of the Agreement range from approximately a positive \$11 million to a negative \$19 million, depending on the PPA rates assumed for the renewal term. The Agreement, thus, could produce either substantial savings or substantial costs for MPS and its ratepayers. The record, however, does not contain enough information for the Commission to make an informed judgment of a reasonable range of likely outcomes if the renewal term were litigated.<sup>1</sup>

Because of this uncertainty, we are unable to make the second statutorily required finding and must deny the certificate of approval at this time. We encourage MPS to re-file its petition for approval. If MPS does so, we will incorporate the existing record into the new proceeding and attempt to arrive at a final decision prior FAME's December Board meeting, currently scheduled for December 18, 1997.<sup>2</sup>

Accordingly, we

#### O R D E R

1. That Maine Public Service Company's petition for a certificate of approval of its electric rate stabilization agreement with Wheelabrator-Sherman is hereby denied without prejudice.

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<sup>1</sup>For example, the record contains avoided cost calculations that are apparently based on the same theoretical approach but yield extremely different results.

<sup>2</sup>The Commission deliberated this matter on November 4, 1997. On November 6, 1997, MPS filed a letter resubmitting its petition.

Dated at Augusta, Maine this 14th day of November, 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
                                         Nugent  
                                         Hunt

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.